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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/158381

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 17, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on August 05, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether Community Care, Inc. correctly denied Petitioner's request to replace/widen a patio door.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

█  
█

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: [REDACTED] Care Manager  
Community Care Inc.  
205 Bishops Way  
Brookfield, WI 53005

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner has Cerebral Palsy and depends upon a power wheel chair for ambulation. (Testimony of [REDACTED] Rehabilitation Specialist)

3. Petitioner lives with her mother and step-father and she attends college. (Testimony of Ms. [REDACTED]; Testimony of Petitioner)
4. On May 28, 2014, the Petitioner requested funding from Family Care to cover the cost of replacing/widening the patio doors at the home owned by her mother and stepfather. (Exhibit 2, pg. 1; Testimony of Ms. [REDACTED]; Care Manager)
5. On June 4, 2014, Petitioner's interdisciplinary team completed a Resource Allocation Decision (RAD) Tool. (Exhibit 2, pgs. 9-11)
6. On that same day, the Community Care Family Care Program sent Petitioner a notice indicating that it was denying the Petitioner's request to modify the patio door. (Exhibit 1, pgs. 3 and 4; Exhibit 2, pgs. 2-7)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 17, 2014. (Exhibit 1 pg. 1)
8. Petitioner is able to independently transition to the floor and can crawl, if necessary. (Testimony of Ms. [REDACTED]; Testimony of Petitioner)
9. Petitioner is able to independently complete a pivot transfer to use grab bars in the bathroom. (Id.)
10. Petitioner uses a walker to increase and maintain leg strength, but is not able to use it independently. (Testimony of Ms. [REDACTED])
11. Using her power wheelchair, Petitioner is able to access her home independently, through her front door, so long as the screen door is propped open. (Testimony of Ms. [REDACTED]; Testimony of Petitioner's mother)
12. Petitioner's mother does not want to remove the screen door, because it would be inconvenient; she uses the screen door to let air in the home and would like to have it to contain a child family member who sometimes comes to visit. (Testimony of Petitioner's mother)
13. The patio door leads to a deck that does not have a wheel chair ramp. (Testimony of Ms. [REDACTED]; Testimony of Petitioner's mother)
14. Petitioner's Individualized Plan, dated June 1, 2014 to November 30, 2014, indicates that her long-term outcomes are to:
  - a. Be as independent as possible and to get her own apartment,
  - b. Maintain her current level of independence with completion of ADLs to remaining living at home, as evidenced by being able to bathe, dress, eat, transfer and used power chair.
  - c. Ambulate with walker, 1x per week with stand-by assistance from family member to increase strength.

(Exhibit 2, pg. 13)

### **DISCUSSION**

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats. §46.286(1) and Wis. Admin. Code §DHS 10.41.* The CMO, in this case Community Care, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

*Emphasis added*

For Family Care members determined to be at the Nursing Home Level of Care, the services listed in Addendum 10, Subsection A are covered services under the 2014 Family Care Contract. This list indicates under paragraph 10, that Home Modifications are a covered service. The contract may be viewed on line at:

<http://www.dhs.wisconsin.gov/mltc/2014/index.htm>

Covered home modifications are described as follows:

**Home modifications** are the provision of services and items to assess the need for, arrange for and provide modifications and or improvements to a participant's living quarters in order to provide accessibility or enhance safety. Modifications may provide for safe access to and within the home, reduce the risk of injury, facilitate independence and self-reliance, allow the individual to perform more ADLs or IADLs with less assistance and decrease reliance on paid staff. Home modifications may include ramps; stair lifts, wheelchair lifts, or other mechanical devices to lift persons with impaired mobility from one vertical level to another; kitchen/bathroom modifications; specialized accessibility/safety adaptations; voice-activated, light-activated, motion-activated and electronic devices that increase the participant's self-reliance and capacity to function independently. Home modifications may include modifications that add to the square footage of the residence if the modification assures the health, safety or independence of the person and prevents institutionalization and the modification is the most cost effective means of meeting the accessibility or safety need compared to other more expensive options.

*Id.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements. Thus, Petitioner bears the burden to prove that she meets the criteria for approval of a home modification consisting of widening/replacing the patio door.

At the hearing, Petitioner's mother argued that it would be inconvenient to remove the front screen door, because she uses it for air circulation and to keep visiting children from running out of the home. Petitioner's mother also argued that Petitioner's bedroom is seven feet closer to the patio door, so in an emergency, like a fire, she would be better off exiting the home from the patio door.

Community Care contends that approval of the home modification is not appropriate because Petitioner can already enter and exit her home independently with her power wheel chair. Community Care also contends that it is not cost-effective to replace the patio door for a number of reasons. First, Petitioner is able to access the home through the front door and would be completely independent, if the screen door were removed. Second, the patio door leads to a deck that does not have a wheel chair ramp and as such, the Petitioner wouldn't be able to leave the home anyway. Third, the Petitioner is able to independently transfer to the floor and crawl out the patio door.

The Family Care program, as an MA Waiver service, may include the following services:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

*Emphasis added* 42 CFR §  
440.180(b)

In addition, when determining whether to authorize a service for Medicaid coverage, the Division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Emphasis added* Wis. Admin. Code, § DHS 101.03(96m).

With regard to the assertion that Petitioner can just crawl out of the home if it is burning down around her is simply callous and lacks merit. None-the-less, Community Care is correct that the Petitioner has not shown that her request for home modification meets approval criteria.

First, it is difficult to believe the fact that Petitioner's bedroom is 7 (seven) feet closer to the patio door than the front door, makes a significant difference in the amount of time it would take the Petitioner to exit the residence. Thus, the requested home modification would not do much to enhance the Petitioner's safety in the home.

Second, the fact that it is inconvenient for Petitioner's mother to remove the screen door, does not make replacement of the patio door a medical necessity, as that term is defined by Wis. Admin. Code, § DHS 101.03(96m), above.

Third, the Petitioner has not shown that replacing/widening the patio door is cost-effective. Petitioner's mother has stated that it would cost \$500 to replace the door, because she and her husband would purchase it from Menard's and install it themselves. However, the Petitioner and her mother have not provided any documentation to show that this is what it would actually cost to replace the door, nor have they provided any documentation showing that alternatives to replacing the door would be more costly. In addition, the record makes clear that the requested modification entails more than just the cost of replacing the patio door, since a ramp would need to be installed on the deck for Petitioner to exit the home in her wheel chair and move to safety during an emergency. Petitioner and her mother provided no information in the record concerning what that cost would be.

At this time, it is found that Petitioner has not met her burden to show that her request to widen/replace the patio door meets the approval criteria.

### **CONCLUSIONS OF LAW**

Community Care correctly denied the Petitioner's request to replace/widen a patio door.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

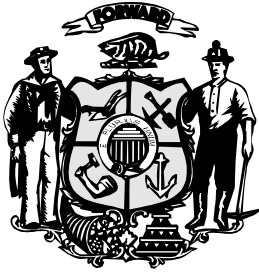
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 4th day of September, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 4, 2014.

Community Care Inc.  
Office of Family Care Expansion